



## Department of Justice

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30 September 2008

Mr David Griffiths  
Secretary, Co-operative Federation of Victoria Ltd  
71 Franciscan Avenue  
FRANKSTON VIC 3199

Dear Mr Griffiths

### **PROPOSED CO-OPERATIVES REGULATIONS REGULATORY IMPACT STATEMENT**

Thank you for your email of 30 September 2008, by which you provided the Co-operative Federation of Victoria Ltd's (CFV's) submission on the Regulatory Impact Statement (RIS) for the proposed Co-operatives Regulations 2008 (the proposed regulations).

I have carefully considered the submission and would like to take this opportunity to respond to CFV's comments on the RIS and proposed regulations.

As was outlined in the RIS, the proposed regulations are based on the *Co-operatives Regulations 1997*, with a minimal number of necessary amendments, and have been developed in the context of movements towards a national approach to the oversight of co-operatives. In light of the impending expiry of the *Co-operatives Regulations 1997*, and in accordance with the requirements of the *Subordinate Legislation Act 1994*, public consultation on the proposed regulations was invited for a period of 28 days.

#### New Schedule 8

The submission queries New Schedule 8 (Prescribed Infringement Penalties) to the proposed regulations, and requests details of the prevalence of the offences in the Schedule and action that has been taken to discourage such offences.

New Schedule 8 replicates, with minor amendments, Schedule 9 to the *Co-operatives Regulations 1997*. As mentioned on page 35 of the RIS, no infringement notices have been issued in recent years. The responsible officers of many co-operative organisations are unpaid volunteers and while a co-operative may be technically in default of reporting or other procedural requirements, it continues to

deliver important or essential services to the community. Accordingly, instead of issuing infringement notices for technical breaches, Consumer Affairs Victoria (CAV) has adopted a capacity-development approach to the regulation of co-operatives through supportive education and training. Nevertheless, the proposed regulations remake the infringement notice provisions in the *Co-operatives Regulations 1997*, in case circumstances should arise in which it is appropriate to issue an infringement notice.

#### *Co-operative philosophy and principles*

The submission comments that both the Act and the Regulations should require the adoption of co-operative principles, practices and objectives. The purpose of the Regulations is to specify and prescribe certain matters to support the operation of the Act. The Act itself promotes the principles, practices and objectives of co-operatives.

#### *Active membership*

The submission also states that the RIS incorrectly assumes that active membership of a co-operative equates with members attending co-operative board meetings. Rather than making this assumption, the RIS highlights that a possible risk of member non-attendance at board meetings is insufficient scrutiny of the board's performance.

#### *Co-operative education*

The submission notes the reference on page 18 of the RIS to a recent funding bid made by the Department of Justice for capacity-building education activities for all co-operatives. It comments that CFV should be involved in the preparation of any funding application for provision of such training. I should stress that any consultation could only be of a general kind, as the preparation of funding bids is a confidential process.

In relation to a statement made in the RIS about the effectiveness of a capacity development approach as a strategy to achieve higher levels of compliance with reporting obligations, the submission states that compliance [with reporting obligations] should be an additional benefit of information, education and training for co-operative boards and members, and not the purpose of it. However, I would suggest that compliance with reporting obligations is a significant benefit of a capacity-development approach to the regulation of the co-operatives sector.

#### *Independent Directors*

The submission also points to page 10 of the RIS, which states that, under Part 9 of the Act, a person is not qualified to be a director unless he or she is a member ("member director") or an employee of the co-operative ("independent director"). As was pointed out in the submission, an independent director need not necessarily be an employee of the co-operative: section 213(1)(b) of the Act provides that either a member or a person qualified as provided by the rules is qualified to be a director of a co-operative.

#### *Staff Resourcing*

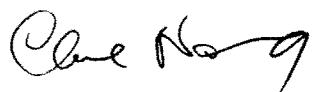
The submission notes that the RIS states that total direct and indirect costs of administering the proposed Regulations is \$54, 535 and queries whether this means that the entire resource devoted to co-operatives within the Registry amounts to 0.5 FTE staff. It should be noted that Appendix 4 to the Proposed Regulations provides an in-depth analysis of the costs associated with administering the proposed regulations. The RIS explains that the time of various officers (at both the VPS 3 and 5 grades) is involved in processing applications for which fees are imposed, and that CAV incurs a number of administrative costs in administering the co-operatives regulatory scheme. The RIS does indicate that the entire resource devoted to co-operatives within the Registry amounts to 0.5FTE staff.

*Exemption Possibilities*

The submission notes that CFV is not in favour of a compliance threshold exempting certain co-operatives from various requirements of the regulations. It should be noted that although the RIS mentions that a compliance threshold by which certain co-operatives could be exempted from particular requirements of the regulations could present opportunities by which to reduce unnecessary regulatory costs, there is also acknowledgement that there is currently no data available to measure how the benefits of the regulations would be affected by such a threshold. The RIS notes that, subject to further analysis, a compliance threshold could be considered as part of the development of a national co-operatives scheme.

If you have any further queries please contact Ms. Michelle Marfurt at CAV on 8684 6982.

Yours sincerely



**Dr Claire Noone**  
**Director**